

# CONSULTANCY AGREEMENT

This Consultancy Agreement (the “Agreement”) is made and entered into this \_\_\_\_\_, 20\_\_ (the “Effective Date”) by and between \_\_\_\_\_ with its principal place of business located at \_\_\_\_\_ (the “Company”) and Electrical Code Academy, Inc. with its principal place of business located at 3913 Edward Drive, McKinney, TX 75071 (the “Consultant”) (hereinafter referred to individually as a “Party” and collectively as “the Parties”).

WHEREAS the Company is in the business of \_\_\_\_\_;

WHEREAS, the Consultant has expertise in the area of Electrical Code Consulting and the National Electrical Code®.

WHEREAS the Company desires to engage the Consultant to provide certain services in Consultant’s expertise and the Consultant is willing to provide such services to the Company.

WHEREAS the term “including” means “including but not limited to.”

NOW, THEREFORE, the Parties hereby agree as follows:

## **Article 1. Engagement and Services**

- (a) Engagement. The Company hereby engages the Consultant to provide and perform the services set forth in Article 15 of this agreement (the “Services”), and the Consultant hereby accepts the engagement.
- (b) Standard of Services. All Services to be provided by Consultant shall be performed with promptness and diligence in a workmanlike manner and at a level of proficiency to be expected of a consultant with the background and experience that Consultant has represented it has. The Company shall provide such access to its information, property and personnel as may be reasonably required in order to permit the Consultant to perform the Services.
- (c) Tools, Instruments and Equipment. Consultant shall provide Consultant’s own tools, instruments and equipment. The Company shall provide the place of performing the Services, unless otherwise agreed between the Parties.
- (d) Representation and Warranty. Consultant represents and warrants to the Company that it is under no conflicting contractual agreement.

## **Article 2. Consultancy Period**

- (a) Commencement. This Agreement shall commence on the Effective Date and shall remain in effect until the completion of the Services or the earlier termination of this Agreement as provided in Article 2 (b) (the “Consultancy Period”).
- (b) Termination. Either Party may terminate this Agreement by giving written notice within 15 calendar days of such termination to the other Party in the event of a material breach by the other

Party. "Material breach" shall include: (i) any violation of the terms of Articles 1 (d), 3, 4, 5, 6, 8, 10 and 11, (ii) any other breach that a Party has failed to cure within 15 calendar days after receipt of written notice by the other Party, (iii) the death or physical or mental incapacity of Consultant or any key person performing the Services on its behalf as a result of which the Consultant or such key person becomes unable to continue the proper performance of the Services, (iv) an act of gross negligence or wilful misconduct of a Party, and (v) the insolvency, liquidation or bankruptcy of a Party.

(c) Effect of Termination. Upon the effective date of termination of this Agreement, all legal obligations, rights, and duties arising out of this Agreement shall terminate except for such legal obligations, rights and duties as shall have accrued prior to the effective date of termination and except as otherwise expressly provided in this Agreement.

### **Article 3. Consultancy Fee and Expenses**

(a) Consultancy Fee. In consideration of the Services to be rendered hereunder, the Company shall pay Consultant a Consultancy fee of **\$250.00** (two-hundred and fifty dollars) for each hour of Services provided to the Company or per the minimum hours clause as expressed in Article 3, Item (b). The hourly fee shall also incorporate the actions: including phone conversations/meetings, pre-meetings, all forms of electronic information exchanges, on-site presentations, general presentation, presentation development and any recordable time associated with the performance of services expressed in this agreement. Hours are to be rounded up on half (1/2) hour intervals where any billable time is less than a full hour rate.

(b) Minimum Hours - Company hereby agrees that if Consultant services as expressed in Article 15 are completed in 8 hours or less billable hours, eight (8) hours shall be deemed the minimum Consultancy fee. Resulting in  $\$250.00 \times 8 = \$2,000.00$ , not including associated expenses as defined in Article 3, sub-section (c).

(c) Expenses. Consultant shall be entitled to reimbursement for all associated expenses reasonably incurred in the performance of the Services, upon submission of receipts in accordance with the then regular procedures of the Company. Expenses due are not linked, embedded, or associated in any way with the Consultancy Fee as expressed in Article 3, Item (a) and (b).

(d) Payment. The Consultant shall submit to the Company a bi-monthly invoice detailing the Services performed during the preceding bi-month period and the amount due. All such invoices shall be due and payable within 10 calendar days after receipt thereof by the Company.

### **Article 4. Work Product and License**

(a) Defined. In this Agreement the term "Work Product" shall mean all work product generated by Consultant solely. Proprietary information or presentations created and presented by the Consultant shall remain sole ownership of said Consultant.

### **Article 5. Confidential Information**

(a) Defined. In this Agreement the term "Confidential Information" shall mean the Work Product and any and all information relating to the Company or Consultant's business, including, but not limited to, research, developments, product plans, products, services, diagrams, formulae, processes, techniques, technology, firmware, software, know-how, designs, ideas, discoveries, inventions, improvements, copyrights, trademarks, trade secrets, customers, suppliers, markets,

marketing and finances disclosed by Company either directly or indirectly in writing, orally or visually, to Consultant. Confidential Information does not include information which:

- (i) is in or comes into the public domain without breach of this Agreement by the Consultant,
- (ii) was in the possession of the Consultant prior to receipt from the Company and was not acquired by the Consultant from the Company under an obligation of confidentiality or non-use,
- (iii) is acquired by the Consultant from a third party not under an obligation of confidentiality or non-use to the Company, or
- (iv) is independently developed by the Consultant without use of any Confidential Information of the Company.

(b) Obligations of Non-Disclosure and Non-Use. Unless otherwise agreed to in advance and in writing by the Consultant, Company nor the Consultant will not, except as required by law or court order, use the Confidential Information for any purpose whatsoever other than the performance of the Services or disclose the Confidential Information to any third party. Neither consultant nor Company may disclose the Confidential Information only to those of its employees who need to know such information. In addition, prior to any disclosure of such Confidential Information to any such employee, such employee shall be made aware of the confidential nature of the Confidential Information and shall execute, or shall already be bound by, a non-disclosure agreement containing terms and conditions consistent with the terms and conditions of this Agreement. In any event, Company nor Consultant shall be responsible for any breach of the terms and conditions of this Agreement by any of its employees. Both the Company and the Consultant shall use the same degree of care to avoid disclosure of the Confidential Information as it employs with respect to its own Confidential Information of like importance, but not less than a reasonable degree of care.

(c) Return of Confidential Information. Upon the termination or expiration of this Agreement for any reason, or upon either parties earlier request, Company and/or Consultant will deliver to all Confidential Information in tangible form that either party to this agreement may have in its possession or control. The Consultant may retain one copy of the Confidential Information in its legal files.

#### **Article 6. Interference with Business**

(a) Non-Competition. During the term of this Agreement, neither the Company nor Consultant will engage in business or other activities, which are, directly or indirectly, competitive with the business activities of the Consultant or Company without obtaining the prior written consent of both parties.

#### **Article 7. Consultant Indemnification Clause**

Company shall defend, indemnify, and hold the Consultant, its officers, and employees harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or resulting from the acts, errors or omissions of the Consultant in performance of this Agreement. Company shall completely indemnify the Consultant of all future actions, either civil or criminal, as a result of performance of this Agreement.

**Article 8. Independent Contractor**

The Consultant agrees that all Services will be rendered by it as an independent contractor and that this Agreement does not create an employer-employee relationship between the Consultant and the Company. The Consultant shall have no right to receive any employee benefits provided by the Company to its employees. Consultant agrees to pay all taxes due in respect of the Consultancy Fee. The Consultant will not indemnify the Company in respect of any obligation that may be imposed on the Company to pay any such taxes or resulting from Consultant's being determined not to be an independent contractor. This Agreement does not authorize the Consultant to act for the Company as its agent or to make commitments on behalf of the Company.

**Article 9. Force Majeure**

Either Party shall be excused from any delay or failure in performance required hereunder if caused by reason of any occurrence or contingency beyond its reasonable control, including, but not limited to, acts of God, acts of war, fire, insurrection, strikes, lockouts or other serious labor disputes, riots, earthquakes, floods, explosions, or other acts of nature.

The obligations and rights of the Party so excused shall be extended on a day-to-day basis for the time equal to the period of such excusable interruption. When such events have abated, the Parties' respective obligations hereunder shall resume.

In the event the interruption of the excused Party's obligations continues for a period more than 45 calendar days, either Party shall have the right to terminate this Agreement upon 15 days' prior written notice to the other Party.

**Article 10. Non-Publicity**

Each of Company and Consultant agree not to disclose the existence or contents of this Agreement to any third party without the prior written consent of the other Party except: (i) to its advisors, attorneys or auditors who have a need to know such information, (ii) as required by law or court order, (iii) as required in connection with the reorganization of a Party, or its merger into any other corporation, or the sale by a Party of all or substantially all of its properties or assets, or (iv) as may be required in connection with the enforcement of this Agreement.

**Article 11. Assignment**

The Services to be performed by Consultant hereunder are personal in nature and are based on over 30 years of electrical education and knowledge, and Company has engaged Consultant as a result of Consultant's expertise relating to such Services. The Consultant is offering industry option and not providing engineering services or engineering recommendations.

**Article 12. Injunctive Relief**

Company acknowledges that a violation of Article 5 or 6 would cause immediate and irreparable harm to both parties for which money damages would be inadequate. Therefore, the Consultant will be entitled to injunctive relief for Company's breach of any of its obligations under the said Articles without proof of actual damages and without the posting of bond or other security. Such remedy shall not be deemed to be the exclusive remedy for such violation but shall be in addition to all other remedies available at law or in equity.

**Article 13. Governing Law and Dispute Resolution**

This Agreement shall be governed by and construed in accordance with the laws of Texas and associated local jurisdictions], without giving effect to any choice of law or conflict of law provisions. The Company agrees to a venue of Consultants choice, within an associated Texas jurisdiction.

**Article 14. General**

This Agreement constitutes the entire agreement of the Parties on the subject hereof and supersedes all prior understandings and instruments on such subject. This Agreement may not be modified other than by a written instrument executed by duly authorized representatives of the Parties.

No waiver of any provision of this Agreement shall constitute a waiver of any other provision(s) or of the same provision on another occasion. Failure of either Party to enforce any provision of this Agreement shall not constitute a waiver of such provision or any other provision(s) of this Agreement.

Should any provision of this Agreement be held by a court of competent jurisdiction to be illegal, invalid or unenforceable, such provision may be modified by such court in compliance with the law giving effect to the intent of the Parties and enforced as modified. All other terms and conditions of this Agreement shall remain in full force and effect and shall be construed in accordance with the modified provision.

**Article 15. Services**

Consultant agrees to provide his/her expert opinion as requested by Company on the use, personal interpretation and industry application of the National Electrical Code® and various products specific to the Wire and Cable Industry. The Consultant reaffirms they are not offering any engineering judgement or professional engineering services in accordance with the engineering laws within Texas. The Consultant agrees to limit his/her area of expertise to the use and code compliance as it pertains to the National Electrical Code as published by the National Fire Protection Association (NFPA).

Consultant offers no guarantee or perceived expectations as to the outcome of services rendered. The Company accepts and agrees to fulfil their obligation of this agreement regardless of their desired outcome of Consultants services as solely expressed in Article 15.

**Article 16. Survival of Provisions**

The following provision of this Agreement shall survive the termination of this Agreement: Articles 2 (c), 3, 4, 5, 6 (b), 7, 8, 10, 15 and 16 and all other provisions of this Agreement that by their nature extend beyond the termination of this Agreement.

IN WITNESS WHEREOF, and intending to be legally bound, the Parties have duly executed this Agreement by their authorized representatives as of the date first written above.

Signed for and on behalf of

Signed for and on behalf of

**Electrical Code Academy, Inc.**

By:

By:

Name:  
Title:

Name: Paul W Abernathy, CMECP®  
Title: President & CEO